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No. 118

In the Supreme Court of the United States

OCTOBER TERM, 1929

FLORSHEIM BROTHERS DRYGOODS COMPANY, LTD.,
PETITIONER

v.

THE UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES OF AMERICA

U.S. GOVERNMENT PRINTING OFFICE: 1929

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The United States does not oppose the petition.

One of the questions presented is whether the five-year period of limitations provided by Section 250 (d) of the Revenue Act of 1921 for the determination and assessment of taxes for the year 1918 is set in motion by the filing of a tentative income-tax return or by the subsequent filing of a complete return. The petitioner seeks review of the decision of the Circuit Court of Appeals holding that the statutory period begins to run only from the date of the final or completed return.

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Since the petition for writ of certiorari in the instant case was filed, the Circuit Court of Appeals for the First Circuit has held, in an opinion rendered June 25, 1929, not yet reported, in *White* v. *Hood Rubber Company,* that the statute starts to run with the filing of a tentative return. That decision is, of course, in direct conflict with the decision of the Circuit Court of Appeals in the case at bar.

While we believe the decision of the Circuit Court of Appeals in the instant case is correct, we do not oppose the petition for writ of certiorari because of the conflict of decisions now existing and the importance of the question involved.

Respectfully submitted.

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Solicitor General.
SEWALL KEY,
BARHAM R. GARY,
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JULY, 1929.

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